IN THE HIGH COURT OF JUDICATURE AT BOBBY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.336 OF 2007

Rajesh Construction Co.
Limited & Anr. .. Petitioners.
Versus
Ravilal Nanji Dedhia & Ors. .. Respondents.

Mr.S.U.Kamdar, learned Senior Counsel i/b.Tamhane & Co. for petitioners.

Mr.D.D.Madon, learned Senior Counsel i/b.M/s.S.Pathak & Co. for respondent Nos.1 & 2.

Mr.P.K.Samdani, learned Senior Counsel i/b.Pramodkumar & Co.for respondent Nos.3 and 4.

Mr.A.Patki for respondent No.6.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 27th August, 2007.

P.C.

1. Heard Mr.Kamdar, learned Counsel, appearing for the petitioners and Mr.Madon, appearing for respondent Nos.1 and 2 so also Mr.Samdani, learned Senior Counsel, appearing for respondent Nos.3 and 4. Mr.Patki, appears for

Shantilal Vershi Haria (Respondent No.6).

2. By this petition under Section 9 of the Arbitration and Conciliation Act, 1996, the petitioners are claiming the relief of appointment of Receiver and injunction with regard to a property being final Plot No.1074, TPS.IV, Cadestral Survey No.114 (part), Prabhadevi, Worli, Mumbai-25, more particularly, described in Annexure-A to the petition.

3. The petition proceeds to state that the 1st petitioner is a limited company viz. M/s.Rajesh Construction Co. Ltd. The 2nd petitioner and his family members constitute Rajesh Builders Group and are carrying on business as Builders and Developers. Several partnership firms and limited companies constitute Rajesh Builders Group. M/s.Rajesh Construction Company, a partnership firm

consisting of family members of the 2nd petitioner was the flagship concern of the said Rajesh Builders Group.

4. According to the petitioners, the 1st respondent and his family members constitute Ravilal Nanji Dedhia Group alias Gagangiri Group and they are carrying on business as Builders and Developers. Respondent No.4 is a partnership firm of which respondent Nos.1 to 3 are the present partners.

5. It is alleged that the Rajesh Builders Group and Ravilal Nanji Dedhia Group had business relations for last several years. In the year 1994, 4th respondent consisted of M/s.Satinder Pal Investment Private Limited and respondent Nos.1 to 3 as its partners. The 4th respondent comprising of M/s. Satinder Pal Investment Private Limited, according to the petitioners,

are owners of the said property. It is pertinent to note that Satinder Pal Investment Pvt. Ltd. is not a party respondent to the petition nor is concerned with the Memorandum of Understanding (for short "MOU") dated 8th November, 2004. After tracing the business relations, what has been alleged is that Mr.Niranjan L.Hiranandani and Mr.Surendra L.Hiranandani were admitted as partners in the 4th respondent alongwith the said Satinder Pal Investment Pvt. Ltd. and respondent Nos.1 to 3 on the terms and conditions contained in Deed of Partnership dated 7th February, 1995.

6. It is contended that Memorandum of Understanding dated 8th November, 2004, executed between petitioners and Ravilal Nanji Dedhia Group envisages that the property which is owned by respondent No.4 and having existing structure shall be jointly developed after demolition of

the same and reconstruction of new building thereon. Reliance is placed upon several recitals of this Agreement, including recital 2(e) and (g).

7. It is contended by Mr.Kamdar, appearing for the petitioners that in pursuance of the M.O.U., several steps were taken by the petitioners, including paying of monies to the partners of the firm, except Ravilal Nanji Dedhia family and Vijay Dedhia family. In substance, the contention is that Hiranandanis' and other partners have been paid off by the petitioners in pursuance of the Clauses in the M.O.U. and Deed of Retirement/Release have been executed by the said retiring partners.

8. After all that was required at their end was done by the petitioners, it was expected that the parties would abide by their commitment and

the Agreement recorded would be implemented in letter and spirit. However, according to the petitioners, in the light of an advertisement which appeared in the newspaper, they apprehended that the partners/groups which have been a party to the M.O.U. would deal with and dispose of and alienate the said property to the detriment of the rights of the petitioners therein. Reliance is placed upon a letter dated 5th July, 2007, addressed to M/s.M.P.Savla & Co., wherein the details pursuant to the M.O.U. have been set out and the petitioners contended that they are entitled to 50% of the right, title and interest in the property, which is a subject matter of the M.O.U. as well as public notice. Accordingly, respondent Nos.1 to 3 were also put to notice on 9th July, 2007 by the present petitioners. Mr.Kamdar submits that it is the case of the petitioners that by letter dated 11th July, 2007, M/s.M.P.Savla & Co., addressed a communication to

the petitioners' Advocate and called upon the petitioners to produce original M.O.U., dated 8th November, 2004 and to furnish Xerox copies before they can deal with the notice. Similar letter was addressed by M/s.S.Pathak & Co. to the other partners.

9. It appears that in pursuance of these communications, a letter was addressed by M/s.Tamhane & Co. to Shantilal Haria, who has been named as an Arbitrator in the M.O.U. The Arbitrator was informed that the original M.O.U., pursuant to the Joint Venture is with him and, therefore, he should give the same so as to enable the petitioners' Advocate to comply with the requisitions contained in the letters of the partners. Accordingly, on 24th July, 2007, Shantilal Haria & Co., addressed the following letter : -

"To,
M/s.Tamhane & Co.
Advocates & Solicitors,
401-A, 4th Floor, Rehman House,
18-A, Nadir Shaw Sukhia Street,
Fort, Mumbai - 400 001.

Re : Property bearing Final
Plot No.1074 at Prabhadevi,
Worli, Mumbai - 400 025.

. Dear Sirs,

. I refer you to your letter dated 21st July, 2007 and would like to inform you that the original MOU pertaining to above-mentioned property is lying with me. The inspection thereof shall be offered to your client and Ravilal Dedhia shortly with due intimation thereof.

Yours faithfully,

Sd/-

Shantilal Haria"

10. It is in the above facts and circumstances and relying upon an affidavit which has been filed by Shantilal Haria & Co. so also the payments referred above, that Mr.Kamdar contends that the Agreement is of Joint Venture. In other words, the rights are with regard to development of the property as and by way of Joint Venture. It is thus a partnership between the groups, named in the M.O.U. and the shares are allotted to each of them. Having shown their bonafides and complied with all their obligations under the M.O.U., the petitioners are entitled to the reliefs prayed for in this petition. He submits that the controversy with regard to the M.O.U. being not available or copy thereof being

in custody of the Sole Arbitrator cannot by any stretch of imagination be used as a shield while claiming any relief by respondents. He submits that Shantilal Haria has been named as an Arbitrator. He may or he may not be Sole Arbitrator now. However, considering the rights in favour of the petitioners and they having complied with their obligations substantially, a strong prima-facie case is made out. Further, balance of convenience is also in favour of the petitioners and grave and irreparable loss and injury would be caused to them if the respondent No.4 as their existing partner, deals with or disposes of the property.

11. The learned Senior Counsel, appearing for the respondents having relied upon the affidavit in reply have strongly urged that there is a dispute with regard to the execution of the documents itself. My attention is invited to the

discrepancies between the copies of M.O.U. annexed to the petition and that supplied by Shantilal Haria & Co. My attention is also invited to the fact that the group concerns/firms of the petitioners themselves are not parties to the M.O.U. They are not parties to the petition. The M.O.U. is unsigned and undated. It is contended that the partners, who are presently constituting the respondent No.4 have not given up their right, title and interest in the property nor such firms have been divested thereof. Further, it is contended that the amounts which have been spent by the petitioners allegedly for paying to certain partners has not reflected in the accounts of the firms. On the other hand, strong reliance has been placed upon the fact that Ravilal Dedhia has filed an affidavit in this Court stating therein that the transaction is a finance/loan arrangement. In such circumstances, respondents urge that the

petition be dismissed. It is their case that with regard to the basic ingredient and facts of the case, there is a serious dispute. Thus, no prima-facie case is made out. On the other hand, the firm would be deprived of its right, title and interest if any interim relief is granted. Consequently, the petition be dismissed.

12. The affidavits that are filed by Shantilal Haria on 17th August, 2007 and 23rd August, 2007 need to be referred to only for the purpose of a prima-facie conclusion with regard to the Agreement/M.O.U. and its existence. In the first affidavit filed on 17th August, 2007, it is stated by the said Shantilal Haria that he knows the petitioners and respondent No.1 and Vijay Dedhia. In the affidavit, in paragraph 3 it is stated that by misrepresentations and undue influence, Rajesh Patel, one of the petitioners got letter dated 24th July, 2007, written by him

and under assurance that the same would not be produced and relied upon in any proceedings but would be used to pressurize respondent No.1 so that the petitioners would recover the amount of finance provided to respondent No.1.

13. In the further affidavit filed by the said Shantilal Haria, in paragraph 2, the said Chartered Accountant states thus :-

> "(iv) The petitioners, the respondents and his brother Vijay held several meetings regarding the said Joint Development and finally on or about 8th November, 2004, I myself, Mr.Ravilal Nanji Dedhia and Mr.Vijay Dedhia had a meeting with Rajesh Sanghavji Patel in his office at Vikhroli viz.Raj Legacy Building, Near Cipla, Vikhroli (West), Mumbai-400 083, wherein both have decided

complete the project situated at Final Plot No.1074, Prabhadevi, Worli, Mumbai-400 025, which belonged to one M/s.Everest Construction Company in which Ravilal Nanji Dedhia is partner. During the course of the said meeting it was agreed between the parties that Rajesh Sanghavji Patel of M/s.Rajesh Builders Group shall enter into Joint Venture Agreement with Ravilal Nanji Dedhia Group and the profit sharing ratio of the parties was agreed at 50% - 50%.

(v) I say that, by mutual consent of the parties, I was named as the Sole Arbitrator for any dispute and differences that may arise between them. Since, I was to act as a sole Arbitrator, the proceedings were agreed to be conducted as per provisions of

Arbitration and Conciliation Act, 1996."

14. He confirms that the original copy of the M.O.U. is kept with him as a Sole Custodian. However, at the same time, both parties had full faith and trust in him as such, initially unsigned copy of the M.O.U. was forwarded to parties. The original of the same was kept with him and unsigned copies thereof were also available with the petitioner No.2 and the respondent No.1. He has referred to an E-Mail of 8th November, 2004, enclosing therewith an unsigned approval copy of the M.O.U. He has annexed the unsigned copy of the M.O.U. with his affidavit. With regard to the earlier letter and the original, he informs that the original is with him but presently untraceable and as and when the same is traced, he would produce it. In paragraph 5 of his affidavit, he states as to why the earlier affidavit was filed.

"5. I, however, say that since the Respondent No.1 wanted to file an Affidavit in this Hon’ble Court believing and trusting in him, I had agreed and accepted to file an Affidavit, with clear understanding of the fact that PRESENTLY the Memorandum of Understanding entered between the parties is not TRACEABLE at my office. However, due to pressure of work and in hurry, I signed the Affidavit as prepared by the Respondent No.1. I, however, due to over sight did not notice the incorrect statement made therein that "the original Memorandum of Understanding relied upon by the petitioners is not with me." After getting the time copy of the same I notice the said incorrect statement in the said Affidavit. Hence, by present Affidavit I am bringing the

> correct fact to the notice to the Hon'ble Court. I tender my sincere and unconditional apology for having inadvertently and by mistake making the said statement in my Affidavit dated 17th August, 2007."

15. Reading the two affidavits as a whole, I am of the view that this professional Chartered Accountant has misled the Court, prima-facie. The Chartered Account is a member of Institute of Chartered Accountants. He is a part of a respectable and noble profession. As a professional and when the parties are litigating in Court, it was his plain duty not to take part in the same unless called upon by the Court. It seems that he is fully aware of the fact that any document or letter/affidavit/statement made by him in Court would be construed as favouring and obliging either of the groups, yet, he has gone

ahead and filed conflicting affidavits. The fact that he is known to the family of the groups and is handling their transactions, makes the matter worse. In my opinion, all that he tenders is an unconditional apology and is present in Court. This is a fit case where the matter be referred to the Institute of Chartered Accountants for taking appropriate action against the said Shantilal Haria in accordance with the rules and regulations and law. I leave the matter at that.

16. Insofar as the merits are concerned, it would not be fair, just and proper to pronounce any final verdict at this stage. Suffice it to state that there are serious disputes between parties with regard to the existence of the M.O.U. and the same having been executed or signed. All through out, prima-facie, unsigned copies have been shown to me. The nature of the transaction, underlying the M.O.U. is also in

serious dispute. There is much substance of Shri.Madon & Mr.Samdani that the firm continues prima-facie to be the owner of the property. If the firm is to be divested of the same, then, all such groups, who were associated with it and with the petitioners ought to be parties to the documents. It is not a comprehensive document and prima-facie evidences some transaction between the respondent No.1 and the petitioners only. It will not be fair to comment upon the transactions at this stage. Prima-facie, it does not appear to me, at this stage that any right, title and interest is created in favour of the petitioners in the said immovable property. If there is a serious dispute throughout about the transaction itself, then, there is substance in the contention that no prima-facie case is made out by the petitioners. The petitioners submissions before this Court are mainly on the strength of some affidavits filed by the proposed

Arbitrator. His affidavits having been found to be conflicting and containing misleading statements, the matter becomes more worse. Besides this, there is substance in the contention that the groups which are now individual groups and existing partner of respondent No.4 cannot be said to be ousted by the disputed document straightaway. More so, when the evidence of its execution and signature is yet to be placed on record. In such circumstances, I am of the view that no prima-facie case is made out by the petitioners. For the reasons set out above, the balance of convenience is also not in their favour. For all these reasons, there is no substance in the arbitration petition and it is accordingly dismissed.

17. At this stage, Mr.Madon states that a statement is made on oath before the Court by the

1st respondent that he is ready and willing to deposit a sum of Rs.1,31,00,000/- within such time as stipulated by this Court. He submits that this would sufficiently protect the petitioners. Although Mr.Kamdar would not state at this stage whether the petitioners are ready and willing to accept this offer, yet, without prejudice to the rights and contentions of parties and to subserve interest of justice, the 1st respondent to deposit in this Court, a sum of Rs.1,31,00,000/- within a period of eight weeks from today. The said sum be invested by the Prothonotary and Senior Master of this Court, initially for a period of one year and subsequently to abide by such directions of the Court or Arbitral Tribunal. A copy of this order be forwarded to the Institute of Chartered Accountants for information and necessary action.

(S.C.Dharmadhikari, J.)